IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2119 OF 2005

The State of Maharashtra ...Applicant

vs.

Santosh S. Deshmukh ...Respondent

Mr.S.V.More, A.P.P. for State
Mr.Rajiv Deokar i/b Mr.Santosh Patil for the Respondent.

CORAM: A.S.OKA,J.
DATE : NOVEMBER 30,2006.

P.C.:

1. Heard learned A.P.P. for the Applicant and the learned Advocate for the Respondent. The Respondent has been acquitted for the offence punishable under sections 408, 420 and 201 of the Indian Penal Code. The first information report was filed by the Chairman of a Cooperative Credit Society. The case made out in the F.I.R. is that the society was collecting various types of deposits from its 609 members. For the purpose of collecting the amounts from the members of the society, Collection Agents have been appointed on commission basis by the credit society. Receipt book is given to every agent. The agent issues receipts to every member after collecting amount. The agent is required to deposit the amount with the society immediately on the next day and a receipt is issued to the agent by the society. An entry is required to be made by the agent in a register of the deposit maintained with him. According to the first informant, the audit report of the society for the year 1995-1996 indicated

defalcation of the amount by the Respondent who was one of the agents appointed by the credit society.

2. Charge was framed against the Respondent stating that during the period from 1st January 1996 to 26th September 1996, the Respondent collected the amounts from the members and he did not deposit a sum of Rs.68,835/- with the society and thus he misappropriated the said amount. The allegation is that he has committed criminal breach of trust and criminal mis appropriation. It is alleged that he has tried to extinguish the evidence of collection of amount by destroying the register of the society and the receipt book.

3. I have perused the impugned Judgment. I have also perused notes of evidence and record and proceeding. The entire prosecution case is based on the report of the Auditor. The case of the prosecution is that the daily register recording the amounts collected by the agents has been stolen and therefore a duplicate register was prepared. It was revealed that there is misappropriation of the aforesaid amount. The allegation is that 50 counterfoils were missing in the receipt book. The receipt book was taken from the Respondent. In the cross examination, P.W.No.1 who was a General Manager of the credit society admitted that in one particular receipt there was an alteration made and the figure of Rs.3015/- was changed to Rs.22,125/- by one Anil Dongre and one Bhalekar. He

admitted in the cross examination that it was the duty of the Manager to check the daily recovery register. He admitted that the Manager has not examined the register and has not reported the said default to the higher authority. P.W.No.3 Dilip Uttam Chavan who was a director of the credit society admitted in the cross examination that the register has been misplaced in the office. When a suggestion was given that the Manager Uttam Chavan has misplaced the register, he was unable to state whether the said register was misplaced by Uttam Chavan. P.W.No.4 Vitthal Sambhaji Gholap who was the Cashier stated that he examined the register and he found that a sum of Rs.68,800/- was misappropriated. P.W.No.5 is the Auditor on the basis of whose audit report, F.I.R. was lodged. The Auditor also accepted the fact that the receipt dated 30th April 1996 was altered by one Anil Dongre and Bhalekar. The Auditor stated in the cross examination that the daily register was lost and the register can show the amount collected or deposited. He stated that he has recorded his conclusion regarding the difference in the amount after preparing a duplicate register. He admitted that the receipts and the duplicate register were not produced in the court.

4. The case of the prosecution was based on the register. It was not established that the register and the said receipts were destroyed by the Respondent. The Auditor admitted that a duplicate register was prepared which shows the difference of

the amount. However, the duplicate register was neither produced nor proved before the court.

5. Considering the evidence of the prosecution witnesses as well as the evidence of the Investigating Officer, I find that the view taken by the learned Trial Judge is a possible view which could have been taken on the basis of evidence on record. No case is made out for grant of leave. Application is rejected.

JUDGE